U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: WAC-00-122-52218 Office: California Service Center Date: JAN 03 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted] Public Copy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a "music director and missionary" at a salary of $2,000 per month or $24,000 per year.

The director denied the petition finding that the beneficiary's claimed volunteer work with the petitioner, while a full-time student, was insufficient to satisfy the requirement that he had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition. The director also found that the duties of the position were primarily secular and were not qualifying as a religious occupation.

On appeal, counsel for the petitioner argued, in pertinent part, that "It is indisputable that full time religious training and education qualify an individual for I-360 immigrant benefits."

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is described as an independent church recognized by the Internal Revenue Service with the appropriate tax exempt status. The beneficiary is described as a native and citizen of Korea who was last admitted to the United States on June 19, 1998, as an F-1 student. The beneficiary's Form I-20-ID reflects that, upon completion of an English language course at Sisa American Language Center, Los Angeles, California, he was authorized to pursue a three-year program in "church music" at Bethesda Christian University from January 24, 2000 to January 23, 2003.

In order to establish eligibility for classification as a special immigrant religious worker, a petitioner must satisfy each of several eligibility requirements.

The first issue in the director's decision is whether the petitioner has established that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on March 24, 2000. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least March 24, 1998.

In this case, the senior pastor of the petitioner submitted a letter dated February 21, 2000 asserting that the beneficiary "served faithfully" an affiliated church in Korea since 1975, "has been primarily engaged in his religious occupation and calling" in Korea from 1994 to the time he departed for "religious training" in the United States in 1998.

Counsel's argument is not persuasive. First, the beneficiary entered the United States in June 1998 and commenced a program of language study. Clearly language study is not considered engaging in a religious occupation.

Second, contrary to counsel's argument, study by a lay person at a religious or Bible college is not considered engaging in a religious occupation. Counsel did not cite any precedent decision

or other legal authority for his argument that it is "indisputable" that such studies satisfy the prior experience requirement. To the contrary, in Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), the Commissioner held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The beneficiary in this case is not an ordained member of the clergy and has never been engaged in a religious vocation as defined in this proceeding. Accordingly, any period of time spent studying at a bible college does not constitute continuous work experience as a lay person in a religious occupation.

Third, the petitioner asserted that the beneficiary's service to his church commenced in 1975. It is noteworthy that the beneficiary's date of birth is in 1965. The petitioner's claim therefore appears to be that the beneficiary's religious work commenced at the age of ten. Such a claim is not persuasive.

In evaluating a claim of prior work experience for special immigrant classification, the Service distinguishes common membership and participation in one's church from engaging in a religious occupation, regardless of the level of devotion or the amount of time spent in church activities. Merely being an active member of a church congregation is not considered engaging in a religious occupation for the purpose of special immigrant classification. In this case, there is no evidence that the beneficiary has ever been engaged in a lay religious occupation which is restricted to full-time paid employment by a church in a position that requires specific religious training.

The next issue is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

> (ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:
>
> (A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.
>
> * * *
>
> (D) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the

> religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a nun, monk, or religious brother, or that the type of work to be done relates to a traditional religious function.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

> *Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.
>
> *Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or

theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The record in this matter is insufficient to establish that the proposed position of "music director" constitutes a qualifying religious occupation. The duties of the position were described as selecting music for worship services and working with the choir.

First, the petitioner provided no information regarding the size of its congregation, the number of worship services, the size of its choir, or the number of choir performances. Absent such information, the Service is unable to concluded that the position of choir director could reasonably be a full-time permanent position in the church. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Second, the duties of the position do not appear to constitute the duties of a religious occupation as contemplated by the regulations. Music is a component of the worship services of many religious denominations. However, the performance of music for a religious organization is not considered a qualifying religious occupation for the purpose of special immigrant classification. A musical background, rather than a theological one, is the only prerequisite for the position. There is no inherent requirement that a person employed as a music or choir director be a member of the employer's denomination or that he or she participate in the worship services, beyond providing the musical direction. The duties of the position are not necessarily dependent on any religious background or prescribed theological education. Nor is the performance of the duty directly related to the creed and practice of the denomination. Accordingly, it must be concluded that the petitioner has failed to establish that the position of music director constitutes a qualifying religious occupation within the meaning of section 101(a)(27)(C) of the Act.

A petitioner must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence

> of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner in this matter has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision.

The petitioner must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not demonstrated that it has ever had any salaried employees, has not established the ability to remunerate the beneficiary, and has not reasonably established its intent to employ the beneficiary in a full-time permanent manner. Absent such information, it must be concluded that the petitioner has failed to establish that the alien would not be dependent on supplemental employment. It is further noted that the petitioner has filed multiple petitions for alien employees. Absent a clear demonstration that the petitioner has both the ability and the intention to employ a number of alien workers in a permanent full-time capacity, the petitioner's unsupported job-offer letter is not sufficient to establish that a bona fide offer of qualifying employment has been tendered.

In reviewing an immigrant visa petition, the Service must consider the extent of documentation and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See Matter of Izdebska, 12 I&N Dec. 54 (Reg. Comm. 1966); Matter of Semerjian, 11 I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Service must consider that the possible rationale for the instant petition is the church's desire to assist an alien member of its congregation to remain in the United States for purposes other than provided for under the special immigrant religious worker provisions. Based on the record as constituted, the petitioner has not adequately demonstrated that it has either the ability or the intention to remunerate the

beneficiary in a permanent salaried position or that the beneficiary seeks to enter the United States to pursue this occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.